



National Highway Traffic Safety Administration

Petition for Exemption from the Federal Motor Vehicle Theft Prevention Standard; North American Subaru, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the North American Subaru, Inc.'s (Subaru) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its BRZ vehicle line beginning in model year (MY) 2023. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. Subaru also requested confidential treatment for specific information in its petition. Therefore, no confidential information provided for purposes of this notice has been disclosed.

DATES: The exemption granted by this notice is effective beginning with the 2023 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43-439, NRM-310, 1200 New Jersey Avenue, S.E., Washington, DC 20590. Ms. Ballard's phone number is (202) 366-5222. Her fax number is (202) 493-2990.

SUPPLEMENTARY INFORMATION

Under 49 U.S.C. chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. NHTSA promulgated regulations at 49 CFR part 541 (theft prevention standard) to require parts-marking for specified passenger motor

vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition NHTSA for an exemption for a line of passenger motor vehicles equipped with an antitheft device as standard equipment that NHTSA decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the theft prevention standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an “immobilizer”) as standard equipment that complies with one of the standards specified in that section.¹

Section 543.8 establishes requirements for processing petitions for exemption from the theft prevention standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will notify the

¹ 49 CFR 543.7 specifies that the manufacturer must include a statement that their entire vehicle line is equipped with an immobilizer that meets one of the following standards:

- (1) The performance criteria (subsections 8 through 21) of C.R.C, c. 1038.114, ***Theft Protection and Rollaway Prevention (in effect March 30, 2011)***, as excerpted in appendix A of [part 543];
- (2) National Standard of Canada CAN/ULC-S338-98, ***Automobile Theft Deterrent Equipment and Systems: Electronic Immobilization*** (May 1998);
- (3) United Nations Economic Commission for Europe (UN/ECE) Regulation No. 97 (ECE R97), ***Uniform Provisions Concerning Approval of Vehicle Alarm System (VAS) and Motor Vehicles with Regard to Their Alarm System (AS)*** in effect August 8, 2007; or
- (4) UN/ECE Regulation No. 116 (ECE R116), ***Uniform Technical Prescriptions Concerning the Protection of Motor Vehicles Against Unauthorized Use*** in effect on February 10, 2009.

petitioner of the deficiencies. Once NHTSA receives a complete petition the agency will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.² Exemptions granted under part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the Federal Register and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers North American Subaru, Inc.'s (Subaru) petition for its BRZ vehicle line beginning in MY 2023.

I. Specific Petition Content Requirements under 49 CFR 543.6

Pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention, Subaru

² 49 U.S.C. 33106(d).

petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the theft prevention standard, beginning in MY 2023. Subaru petitioned under 49 CFR 543.6, Petition: Specific content requirements, which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements.

More specifically, section 543.6(a)(1) requires petitions to include a statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which the exemption is sought. Under section 543.6(a)(2), each petition must list each component in the antitheft system, and include a diagram showing the location of each of those components within the vehicle. As required by section 543.6(a)(3), each petition must include an explanation of the means and process by which the device is activated and functions, including any aspect of the device designed to: (1) facilitate or encourage its activation by motorists; (2) attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; (3) prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key; (4) prevent the operation of a vehicle which an unauthorized person has entered using means other than a key; and (5) ensure the reliability and durability of the device.³

In addition to providing information about the antitheft device and its functionality, petitioners must also submit the reasons for their belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief,⁴ and the reasons for their belief that the agency should determine that the antitheft device is likely to be as effective as compliance with

³ 49 CFR 543.6(a)(3).

⁴ 49 CFR 543.6(a)(4).

the parts-marking requirements of part 541 in reducing and deterring motor vehicle theft. In support of this belief, the petitioners should include any statistical data that are available to the petitioner and form the basis for the petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with part 541.⁵

The following sections describe Subaru's petition information provided pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention. To the extent that specific information in Subaru's petition is subject to a properly filed confidentiality request, that information was not disclosed as part of this notice.⁶

II. Subaru's Petition for Exemption

In a petition dated September 7, 2021, Subaru requested an exemption from the parts-marking requirements of the theft prevention standard for the BRZ vehicle line beginning with MY 2023.

In its petition, Subaru provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the BRZ vehicle line. Subaru stated that its MY 2023 BRZ vehicle line will be installed with an engine immobilizer device as standard equipment, as required by 543.6(a)(1). Subaru also stated it will offer a "Smart Key" system on all trim lines, which includes keyless access and push start functions. Specifically, key components of the "smart entry" system will include a keyless access engine control unit (ECU), steering lock ECU, engine ECU, an interior antenna, push button ignition switch, and an access key. Subaru also stated that there is a diagnosis tool used to perform a key ID code registration to the immobilizer module. Subaru stated that its antitheft device will also include an alarm system as standard equipment. Subaru stated that its alarm system will monitor door status and

⁵ 49 CFR 543.6(a)(5).

⁶ 49 CFR 512.20(a).

key ID, and opening of a door or hood will activate the alarm system. Subaru further stated that visual and audio features will attract attention to the efforts of an unauthorized person to enter or move the vehicle by sounding the vehicle's horn and illuminating the 4-way flashing hazard lamps.

Pursuant to section 543.6(a)(3), Subaru explained the means and process by which the immobilizer device is activated and functions. Subaru stated that its antitheft system and immobilization features are designed and constructed within the vehicle's overall CAN (controller area network) electrical architecture which means the antitheft system cannot be separated by rerouting or tapping into particular wires or connectors. Subaru further stated that the immobilization features will prevent operation of the vehicle by preventing the starting or operation of the engine even if an unauthorized person was to gain entry into the vehicle.

Subaru stated that its BRZ antitheft system is activated when the ignition is at the "OFF" position or the door is opened/closed while propulsion system is off and ignition is at the "ON" or "ACC" position. Deactivation occurs after the driver gets in the vehicle with the access key and pushes the button ignition switch while pressing the brake pedal, and random codes are then transmitted to the access key from the keyless access ECU through the interior antenna. Once the access key receives the signal, it returns the encrypted code. When pushing the push button ignition switch once again, the power is turned off and the security indicator lamp blinks. Subaru stated that this method of activation will facilitate and encourage its activation by motorists because it requires nothing more than the removal of the key from the ignition switch when the vehicle is not being used.

As required in section 543.6(a)(3)(v), Subaru provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Subaru conducted tests based on its own specified standards and provided a detailed list of the tests conducted. Subaru stated that it believes that its device is reliable and durable because it complied with its own specific design standards and the antitheft device is installed on other

vehicle lines for which the agency has granted a parts-marking exemption.

Subaru stated that its theft rates have been low per the National Insurance Crime Bureau's 2019 report on America's 10 most stolen vehicles. However, Subaru compared its proposed device to other Subaru antitheft devices that NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Specifically, Subaru stated that the theft rate of the MY 2008 Impreza (not parts marked, standard engine immobilizer) decreased by almost 51% as compared to the MY 2007 Impreza (parts marked with optional engine immobilizer). Subaru stated that the antitheft system included on the BRZ vehicle line is the same system employed on the Subaru Ascent car line, for which NHTSA determined that the system was likely as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.⁷

Subaru also stated that the National Crime Information Center's (NCIC) theft data showed that there was a 70% reduction in theft experienced when comparing the MY 1997 Ford Mustang vehicle thefts (with immobilizers) to MY 1995 Ford Mustang vehicle thefts (without immobilizers). On the basis of the above and other cited comparisons, Subaru has concluded that its proposed immobilizer system is no less effective than those devices installed on lines for which NHTSA has already granted full exemptions.

III. Decision to Grant the Petition

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541 or if deemed approved under 49 U.S.C. 33106(d).

⁷ 82 FR 57650 (Dec. 06, 2017).

NHTSA finds that Subaru has provided adequate reasons for its belief that the antitheft device for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. This conclusion is based on the information Subaru provided about its antitheft device.

The agency concludes that Subaru's antitheft device will provide the five types of performance features listed in section 543.6(a)(3): promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A-1, identifies those lines that are exempted from the theft prevention standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the theft prevention standard.

If Subaru decides not to use the exemption for its requested vehicle line, the manufacturer must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if a manufacturer to which an exemption has been granted wishes in the future to modify the device on which the exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device

similar to but differing from the one specified in the exemption.”⁸

For the foregoing reasons, the agency hereby announces a grant in full of Subaru’s petition for exemption for the BRZ vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2023 vehicles.

Issued under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking

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⁸ The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if a manufacturer with an exemption contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.